



DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Notice of Approved Class III Tribal Gaming Ordinance

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of the approval of Big Sandy Rancheria of Western Mono Indians' Class III gaming ordinance by the Chairman of the National Indian Gaming Commission.

DATES: This notice is applicable [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Dena Wynn, Office of General Counsel at the National Indian Gaming Commission, 202-632-7003, or by facsimile at 202-632-7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 et seq., established the National Indian Gaming Commission (Commission). Section 2710 of IGRA authorizes the Chairman of the Commission to approve Class II and Class III tribal gaming ordinances. Section 2710 (d) (2) (B) of IGRA, as implemented by NIGC regulations, 25 CFR 522.8, requires the Chairman to publish, in the Federal Register, approved Class III tribal gaming ordinances and the approvals thereof.

IGRA requires all tribal gaming ordinances to contain the same requirements concerning tribes' sole proprietary interest and responsibility for the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees and primary management officials. The Commission, therefore, believes that publication of each ordinance in the Federal Register would be redundant and result in unnecessary cost to the Commission.

Thus, the Commission believes that publishing a notice of approved Class III tribal gaming ordinances in the Federal Register, is sufficient to meet the requirements of 25 U.S.C. 2710 (d) (2) (B). Every ordinance and approval thereof is posted on the Commission's website (www.nigc.gov) under General Counsel, Gaming Ordinances within five (5) business days of approval.

On June 22, 2022, the Chairman of the National Indian Gaming Commission approved Big Sandy Rancheria's Class III Gaming Ordinance. A copy of the approval letter is posted with this notice and can be found with the approved ordinance on the NIGC's website (www.nigc.gov) under General Counsel, Gaming Ordinances. A copy of the approved Class III ordinance will also be made available upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission, Attn: Dena Wynn, 1849 C Street NW, MS #1621, Washington, DC 20240 or at info@nigc.gov.

National Indian Gaming Commission.

Dated: June 23, 2022.

Michael Hoenig,

General Counsel.

June 22, 2022

Elizabeth D. Kipp, Chairwoman

Big Sandy Rancheria

37387 Auberry Mission Rd

PO Box 337

Auberry, CA 93602

Re: Big Sandy Rancheria Site-Specific Tribal Gaming Ordinance 02-01

Dear Chairwoman Kipp:

I am writing with respect to the April 12, 2022, request of the Big Sandy Rancheria of Western Mono Indians of California to the National Indian Gaming Commission to review and approve the Tribe's amended gaming ordinance, Ordinance 02-01. The amended gaming ordinance was adopted by Resolution No. 0122-01 of the Tribal Council.

The amended gaming ordinance contains a site-specific section that describes the original allotment of Mary McCabe (the "McCabe Allotment") as land within which the Tribe is authorized to conduct gaming. This section required the NIGC to consider whether the McCabe Allotment would constitute Indian lands on which the Tribe may conduct gaming activities under the Indian Gaming Regulatory Act. On May 13, 2022, the NIGC Office of General Counsel issued a legal opinion concluding that the McCabe Allotment constitutes Indian lands on which the Tribe may conduct such gaming. On May 17, 2022, the Department of the Interior, Office of the Solicitor, issued its concurrence with that opinion. I hereby adopt the attached May 13, 2022 Indian lands opinion, its associated record, and its conclusions.

Thank you for providing the amended gaming ordinance for our review. The ordinance is approved as it is consistent with the requirements of the Indian Gaming Regulatory Act and NIGC regulations. If you have any questions concerning this letter, please contact Senior Attorney Austin Badger at (202) 632-7003.

Sincerely,

E. Sequoyah Simermeyer

Chairman

MEMORANDUM TO THE CHAIR

Through: Michael Hoenig, General Counsel
Sharon M. Avery, Associate General Counsel

From: Austin Badger, Senior Attorney

Date: May 13, 2022

Subject: Big Sandy Rancheria of Western Mono Indians of California – (McCabe Allotment) Indian Lands Opinion

On April 12, 2022, the Big Sandy Rancheria of Western Mono Indians of California submitted to the NIGC a request for approval of an amended gaming ordinance.¹ Amendments to the gaming ordinance include specifying that gaming is authorized on “the north half of Lot two of the northwest quarter of Section 18, Township 11 South, Range 22 East, Mount Diablo meridian, in Fresno County, California, being the original allotment of Mary McCabe, Sac-120...” (McCabe Allotment). This Memorandum addresses whether the McCabe Allotment qualifies as Indian lands under the Indian Gaming Regulatory Act on which the Tribe may conduct gaming.

On September 6, 2006, the Office of General Counsel opined that the McCabe Allotment qualified as Indian lands eligible for gaming by the Tribe. At that time, the McCabe Allotment was held in trust by the United States for the benefit of Big Sandy Rancheria tribal member Sherrill Anne Esteves. Ms. Esteves passed away on June 18, 2019, and pursuant to a decision of the Probate Hearings Division of the Department of the Interior’s Office of Hearings and

¹ The Tribe provided additional information concerning the McCabe Allotment on February 21 and 25, 2022. The Tribe’s submission included: Declaration of Elizabeth Kipp, Chairperson of the Tribal Council of the Big Sandy Band of Western Mono Indians (February 11, 2022) (“Kipp Declaration”), “The Public Domain Allotment of Mary McCabe and the Big Sandy Rancheria: A Preliminary Historical Report,” G. Russell Overton (February 25, 2022) (“Overton Report”), and “Tribal Jurisdiction over McCabe Allotment,” Peebles Kidder Bergin & Robinson, LLP (February 25, 2022).

Appeals, all of her interest in the land will pass to her daughter Carolyn Lee.² The Tribe therefore requests our opinion as to whether the McCabe Allotment continues to qualify as Indian lands eligible for gaming by the Tribe as currently held for the beneficial interest of the estate, as potentially held for the beneficial interest of Big Sandy Rancheria tribal member Carolyn Lee, and as potentially held for the beneficial interest of the Tribe should Carolyn Lee and the Tribe complete a trust-to-trust transfer to the Tribe. After reviewing the status of the McCabe Allotment and the effect of these potential transfers of beneficial interest, we have determined that under each scenario the land continues to qualify as Indian lands under IGRA on which the Tribe may lawfully conduct gaming. The Department of the Interior Solicitor's Office has reviewed this legal opinion and concurs.

Background

The McCabe Allotment was originally allotted out of the public domain to Mary McCabe, a "Mono Indian," in 1920 and immediately placed into trust. The McCabe Allotment is currently held in trust by the United States for the benefit of the estate of tribal member Sherrill Anne Esteves. The original heirs to the estate were Big Sandy Rancheria tribal member Carolyn Lee and Lone Pine Paiute-Shoshone tribal member Edward Esteves. The decision concluding the probate process determined that Edward Esteves renounced his interest in the parcel in favor of Carolyn Lee. The Tribe has further indicated that Carolyn Lee and the Tribe intend to complete a trust-to-trust transfer which would cause the McCabe Allotment to be held in trust by the United States solely for the benefit of the Tribe.

Applicable Law

IGRA defines "Indian lands" as:

- (A) all lands within the limits of any Indian reservation; and

² "In the Matter of the Estate of: Sherrill Anne Esteves," Decision, Probate T000169570 (formerly P0001695701P) (April 22, 2022). The Decision is final unless a petition for rehearing is timely filed within 30 days.

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.³

NIGC regulations further clarify the definition, providing that:

Indian lands means:

- (a) Land within the limits of an Indian reservation; or
- (b) Land over which an Indian tribe exercises governmental power and that is either -
 - (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or
 - (2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.⁴

Analysis

The McCabe Allotment is not within the Big Sandy Rancheria. It is currently held in trust for the benefit of the estate of tribal member Sherrill Anne Esteves. To conduct gaming on trust lands located outside the exterior boundaries of its reservation, IGRA requires a tribe to exercise governmental power over those trust lands. Therefore, the McCabe Allotment constitutes Indian lands if the Tribe exercises governmental power over it. To exercise governmental power over its trust lands, a tribe must first possess jurisdiction over those lands.⁵

³ 25 U.S.C. 2703(4).

⁴ 25 CFR 502.12.

⁵ *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685 at 701-703 (1st Cir. 1993) (IGRA requires a threshold showing by tribe that it possesses jurisdiction over the lands to satisfy the Act's "having jurisdiction" prong).

Jurisdiction

Tribes are presumed to possess jurisdiction within “Indian country.”⁶ Trust land, such as the McCabe Allotment, is “Indian country.”⁷ And, in *Opinion of the Solicitor, Sampson Johns Allotment* (September 26, 1996), Interior opined that a tribe would possess jurisdiction over a tribal member’s allotment unless the “land in question is not owned or occupied by tribal members and is far removed from the tribal community.”

Here, the McCabe Allotment is held in trust for the estate of tribal member Sherrill Ann Esteves and is located within 12 miles of the Tribe’s reservation.⁸ The Tribe, therefore, has jurisdiction over the McCabe Allotment for IGRA gaming purposes.

Our conclusion with respect to jurisdiction would not change should beneficial ownership of the McCabe Allotment transfer to Carolyn Lee or to the Tribe.

Governmental Power

There are many possible ways and circumstances in which a tribe might exercise governmental power over its land. For this reason, the NIGC has not formulated a uniform definition of “exercise of governmental power,” but instead decides whether it is present in each case, based upon all the circumstances.⁹ As noted by the First Circuit, the exercise of governmental power is “not the achievement of full-fledged self-governance, but merely movement in that direction.”¹⁰

⁶ “Indian country” is defined in 18 U.S.C. 1151 as: “(a) all land within the limits of any Indian reservation ...; (b) all dependent Indian communities ...; and (c) all Indian allotments, the Indian titles to which have not been extinguished.”

⁷ See *United States v. Roberts*, 185 F.3d 1125, 1131 (10th Cir. 1999) (“‘[r]eservation’ status is not dispositive and lands owned by the federal government in trust for Indian tribes are Indian Country pursuant to 18 U.S.C. 1151”).

⁸ The Tribe has also provided documentation supporting the conclusion that the heirs (Frank McCabe, Lester McCabe, and Sherrill Ann Esteves (nee McCabe)) of the original allottee, Mary McCabe, have “all identified as Western Mono members of the Big Sandy Rancheria.” See Overton Report, p. 31.

⁹ *National Indian Gaming Commission: Definitions under the Indian Gaming Regulatory Act*, 57 Fed. Reg. 12382, 12388 (1992).

¹⁰ *Massachusetts v. Wampanoag Tribe of Gay Head (Aquinnah)*, 853 F.3d 618, 626 (1st Cir. 2017).

Here, the Tribe's Constitution provides that the Tribe has jurisdiction over any allotment of a tribal member. The Tribe provides governmental services to off-reservation Indian allotments owned or occupied by tribal members including the McCabe Allotment and other allotments in the surrounding area.¹¹ The Tribe requires non-Tribal visitors, such as contractors, surveyors, and others, to obtain a permit before entering off-reservation Indian allotments to conduct work on behalf of the Tribe or a tribal member allottee.¹² The Tribe has therefore demonstrated that it exercises governmental power over the McCabe Allotment.

Our conclusion with respect to governmental power would not change should beneficial ownership of the McCabe Allotment transfer to Carolyn Lee or to the Tribe.

Conclusion

Based upon the foregoing analysis, the statutory language of IGRA, and NIGC and Interior regulations, the McCabe Allotment as currently held by the estate of Sherrill Anne Esteves constitutes Indian lands eligible for gaming by the Tribe under the Indian Gaming Regulatory Act. Our conclusion with respect to such eligibility for gaming by the Tribe would not change should the beneficial ownership of the McCabe Allotment transfer to Carolyn Lee or to the Tribe. The Department of the Interior, Office of the Solicitor concurs with this opinion.

[FR Doc. 2022-13866 Filed: 6/28/2022 8:45 am; Publication Date: 6/29/2022]

¹¹ Kipp Declaration, p. 8.

¹² Kipp Declaration, p. 3.